IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3369 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KANJIBHAI MAVJIBHAI DANGAR

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 3369 of 1995

MR VIJAY H PATEL for Petitioner No. 1

MR KL PANDYA, AGP for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioner is carrying on business of foodgrains. It is the case of the petitioner that a

stock of wheat in 110 bags was being transported from Fair Price Shop of village Navagam (Anandpara) of Rajkot Taluka on 27.3.1990 to Umpire Flour Mills. A show cause notice dated 18.2.1991 was issued to the petitioner as to why the said stock should not be confiscated. Though the petitioner gave the reply to the show cause notice, the Dy. Collector, Rajkot by order dated 24.12.1991 confiscated the truck under the provisions of the Essential Commodities Act, 1955.

2. Against the aforesaid order, the petitioner preferred appeal before the Secretary, Food and Civil Supplies Department, Govt. of Gujarat, which came to be dismissed by the said authority. It is the contention of the petitioner that "Wheat" is not an essential commodity under the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981, and the said item, i.e. "Wheat" stands deleted from the Schedule I of Order, 1981. However, it appears that this contention was never taken before before the Secretary, Food and Civil Supplies Department, Govt. of Gujarat. Learned Advocate for the petitioner has stated that the only question of law is that in view of the fact that the confiscated item is not under control under the Essential Commodities Act pursuant to the Government notification, the order passed by the authorities is without jurisdiction.

3. I have called upon learned AGP Mr.Pandya to verify the said position and on verification, he has made a statement that by notification, the State Government has deleted "Wheat" from the control of Essential Commodities Act pursuant to the notification dated 27th October 1986, which is reproduced hereunder:

> "51. The Gujarat Essential Articles (Licensing, Control and Stock) (Declaration) (Amendment) Order, 1986 -- Some words deleted from Sch.I of the Principal Order, 1981.
>
> In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955) read with the Order of the Government of India, Ministry of Industry and Civil Supplies (Department of Civil Supplies and Cooperation) No.S.O. 681(E), dated the 30th November, 1974 and S.O. 682(E), dated the 30th November, 1974 and the Ministry of Agriculture (Department of Food, G.S.R. Nos. 452(E), dated the 25th October, 1972, G.S.R. 168(E), dated the 13th March, 1973 and the Ministry of Agriculture

(Department of Food) No. G.S.R. 800, dated the 9th June, 1978, and with the prior concurrence of the Central Government, the Government of Gujarat hereby makes the following Order, namely:--

1. (1) This Order may be called the Gujarat Essential Articles (Licensing, Control and Stock (Declaration) (Amendment) Order, 1986.

(2) It shall come into force at once.

2. In the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981, in Schedule I, in Part I, under the heading 'Foodstuffs", under sub-heading "A. Foodgrains including products thereof" the entry "(1) Wheat" shall be deleted.

[Order No. GTH-86-29-ECA-1086-GOI-120-B, dt. 27-10-1986 -- Guj. Govt. Gaz., Ex.Pt. IV-A dt. 27-10-1986, p.131]"

4. In view of the above Government notification, "Wheat" is not covered under the definition of Essential Commodity. Therefore, the orders passed by the Collector and the Deputy Secretary are required to be quashed and set aside.

5. In the result, the petition is allowed. The orders passed by the Collector and the Deputy Secretary are quashed and set aside. Rule is made absolute accordingly, with no order as to costs.

(K.S. Jhaveri, J.)

Sreeram.